



ADVISORY NOTICE

APPROVAL OF REVISED UPDATES AND AMENDMENTS TO APPLICATION WITHDRAWALS AND ABANDONMENTS, AND HEARING PROCEDURES

(CGCC-GCA-2018-04-R)

On October 28, 2019, the Office of Administrative Law approved regulations which update the California Gambling Control Commission's (Commission) procedures for approving, conditioning, or denying an application. The approved regulations were filed with the Secretary of State on January 22, 2020, and will become effective April 1, 2020.

In general, these regulations conformed the individual licensing timelines for the Commission consideration of an application with the timelines provided in California Code of Regulations, Title 4, Division 18, Sections 12006 through 12068.

Approved Regulations

This regulatory action has made changes in Chapter 1 of Division 18 of Title 4 of the California Code of Regulations. Those changes are as follows:

A general change has been made in the proposal to replace the word "shall" with other words less subject to interpretation.

ARTICLE 1. DEFINITIONS AND GENERAL PROCEDURES

Amend Section 12002. Definitions.

Subsection (u) provides a definition for interim renewal license. This definition provides that an interim license is issued to an applicant for the renewal of license, work permit, or other approval involving a finding of suitability when their application is pending consideration at an evidentiary hearing or the holder of a current license or work permit has a pending accusation.

Subsection (h) provides a definition for Chief of the Bureau. This works in conjunction with the definition of Bureau in subsection (e) by clarifying that the Bureau is the entity within the Department that is responsible for fulfilling the obligations imposed upon the department by the Act. Additionally, this definition clarifies that the Chief may designate an individual to act on his behalf to perform the duties of the department as required by the Act and must not himself or herself be responsible to conduct every responsibility, duty, or requirement.

Amend Section 12006. Service of Notices, Orders and Communications

Subsection (a) is modified to allow for notices to be provided by first class mail and registered mail in addition to certified mail.

Subsection (b) is replaced with a new provision added to provide flexibility when providing notice for applications, licensees, and designated agents who request in writing to receive notices via email.

Subsection (c) is added to hold the contents of former subsection (b) and modified to allow notices to be effective upon “transmission.”

Amend Section 12012. Ex Parte Communication

Subsection (d)(3) is modified to make clear that information or documents provided by an applicant’s designated agent are included with those from an applicant when determining if the exclusion from the ex parte definition applies.

Subsection (d)(6) is added to make clear that communications between an advisor and a member of the Commission, by themselves, are not ex parte communications.

Amend Section 12014. Subpoenas

This section is amended to replace the word “shall” with more appropriate words.

Amend Section 12015. Withdrawal of Applications

Subsection (a) is modified to make clear that a designated agent may make a request on behalf of an applicant to withdraw an application.

Subsection (f) is modified to restructure the section to make clear that an applicant does not withdraw an application, but rather the Commission approves a withdrawal request.

Amend Section 12017. Abandonment of Applications

Section (a)(1)(B) is modified to allow designated agents to provide information to the Bureau on the applicant’s behalf.

Section (b)(1) is modified to clarify that the Bureau makes the recommendation for approval or makes no recommendation.

Section (c) is modified to be more consistent in syntax to (b)(1).

Section (d) is modified to replace “unexpended” with “unused” and “possible” is replaced with “available.”

Section (e) is modified to replace “their” with “his, her, or its” application to be consistent with the same language as used elsewhere in Section 12017. Additionally, this section is modified to make clear that the Commission deems an application abandoned, rather than an applicant abandons an application.

Amend Section 12035. Issuance of Interim Renewal License

Subsection (a) is modified to make it clear that the Commission will also issue an interim renewal license for work permits, and other approvals involving a finding of suitability.

Current subsection (b) is moved to a new subsection (c). The last sentence of former subsection (b)(2) is moved to a new subsection (b) and expanded upon. This provision is amended to restructure the sentences into one and specifically identify paragraphs (1) and (2) as being required for submittal.

Paragraph (1) explains that applicants must submit a new application for the new interim renewal license through a process similar to the one for the application pending considering at the evidentiary hearing including the same forms, fees, costs, and related requirements.

Paragraph (3) was originally proposed to be part of paragraph (2). It has been amended to be its own paragraph in order to separate it from the requirements to receive an interim renewal license.

Paragraph (2) is added to require applicants for a new interim renewal license to provide an update to the Commission on why the hearing process has not concluded in the previous two-year period. It also requires them to work with the Complainant if possible. This provision is amended to remove the standard of reasonable. Additionally, the last sentence has been removed.

Subsection (c) is language moved from the former subsection (b).

Subsection (c)(2) is modified to clarify a work permit or other approval involving a finding of suitability, as well as an interim renewal license may serve as the starting point for the term of an interim renewal license.

Subsection (b)(4) is re-lettered (d). In addition, the section is modified to clarify that the issue date will also apply to any issued work permit or other approval.

Subsection (b)(5) is relettered to (e).

Subsection (b)(6) is relettered to (f).

ARTICLE 2. PROCEDURES FOR HEARINGS AND MEETINGS ON APPLICATIONS

Amend Section 12050. Bureau Recommendation and Information

Paragraph (a)(2) is modified to reference paragraph (7) of subsection (d) of Section 12012.

Section (b) is modified to shorten the subsection into one sentence and eliminate redundancy and ambiguity.

Amend Section 12052. Commission Meetings; General Procedures; Scope; Rescheduling of Meeting

Subsection (c)(1) is modified to add a reference to section 12054 to make clear the specific type of meeting being referenced in the notice.

Subsection (c)(1)(A)(2) is modified to add “consideration of the” before application.

Subsection (c)(2)(E) is modified to include a new version of the Notice of Defense Form (CGCC-ND-002)(Rev. 12/18).

Subsection (c)(F) is modified to shorten the section and make a reference to the new section 12057.

Subsection (d) is modified to change the wording to be consistent with other edits in the regulation package.

Amend Section 12054. Consideration at Regular (Bagley-Keene) Commission Meetings

Subsection (a)(2) is modified to strike “when” which is merely a modification to syntax without substantive effect. This section also adds “or retract” to clarify that the Commission may retract the referral of an application to an evidentiary hearing.

Subsection (a)(3) is modified to clarify that the Commission is acting on applications for renewals.

Subsection (a)(7) is modified to replace “accusatory pleading” with the word “accusation.”

A new subsection (a)(8) is added to make clear that the Commission can issue a default decision pursuant to new section 12057 at regular Commission meetings.

A new subsection (a)(9) is added to make clear that the Commission may consider reconsideration requests pursuant to section 12064 at a regular Commission meeting.

Subsection (b) is modified to restructure the section to make clear that the Commission’s denial of a request to withdraw an application, as well as a finding of abandonment, does not afford an applicant an opportunity to have an evidentiary hearing to challenge that determination.

Amend Section 12056. Evidentiary Hearing

1. Subsection (a) is modified to replace “advocates” with “an advocate” to improve the syntax of the sentence.
2. A new subsection (d) is added to make clear that the Commission retains authority to control the path an application takes through the evidentiary hearing process. This language is moved from section 12060 with clarifying edits.

Adopt Section 12057. Default Decisions and Uncontested Applications

Subsection (a) makes clear to applicants that when the applicant fails to submit a notice of defense according to the timelines on the form, waives the right to an evidentiary hearing, or fails to attend an evidentiary hearing, the Commission may adjudicate the application by default.

- Paragraph (1) of subsection (a) provides that when the Commission adjudicates and application by default, it may issue a default decision. The requirement of basing the decision upon the Bureau report was modified to the requirement that the Commission issue its default decision after the consideration of the Bureau report.
- Paragraph (2) of subsection (a) was not amended beyond the removal of subsection (b) and the incorporation into subsection (a).
- Paragraph (3) subsection (a) provides that the Commission may reschedule a GCA hearing when an applicant fails to attend. In addition to the amendments to this provision consistent with the renumbering, this provision is amended to remove the appropriateness consideration.
- Paragraph (4) to subsection (a) provides that the Commission could act on an application in a manner identified in subsection (a) of Section 12054.

Subsection (b) provides the possible outcomes to an applicant when the Commission adjudicates an application by default. These outcomes can include 1) the Commission issuing a default decision upon the application and any other documents the Commission has been or will be provided prior to the decision being issued, or without applicant participation 2) the Commission continuing forward with an evidentiary hearing to gather evidence before issuing a decision.

Subsection (c) provides that the Commission may reschedule a GCA hearing when an applicant fails to attend in addition to the options provided in subsection (b).

subsection (b) alters the time frames required under Section 12060, subsections (a) & (b), for notices of evidentiary hearings when the Commission is considering a default decision or scheduling a hearing without applicant participation.

Subsection (c) follows up on the modification made to section 12054 that the Commission may consider default decisions at regular non-evidentiary hearing meetings. Presently, default decisions are considered at an evidentiary hearing which is run simultaneously with a non-evidentiary meeting. This edit allows the Commission to consider the default decision without the possible need for additional procedures required for full evidentiary hearings. This section also preserves the option that default decisions may be considered at full evidentiary hearings which preserves Commission discretion to act on applications in a manner it deems appropriate.

Subsection (d) makes it clear that when the Commission issues a default decision on an application, that applicant may follow the same procedures for requesting reconsideration as are available to normal evidentiary hearings and decisions.

Amend Section 12058. APA Hearings

Subsection (e) is modified to make clear that the APA hearing will proceed through the normal process unless and until the Executive Director or the Commission approves retracting the referral.

Amend Section 12060. GCA Hearings

Subsection (a) is modified to remove the last sentence and move it with clarifying modifications to section 12056(d).

Subsection (c) is modified in two ways. First, support staff is added to those that are precluded from communicating upon the merits of an application. Second, this section is modified to remove the reference to “information or documents” which could be interpreted as precluding procedural communications and the provision of jurisdictional documents in advance of a hearing.

Subsection (e) is modified to add a reference to section 12056(b) which reiterates the Bureau’s and Commission’s responsibility to protect certain confidential information from disclosure.

Subsection (f)(1)(D) is modified to expressly provide for stipulations on evidence and not merely facts in the Bureau Report.

Subdivision (f)(1)(E) is relettered to subdivision (F) and a new subdivision (E) is created which expressly authorizes the Presiding officer to provide for offsite livestreaming appearances of parties and witnesses.

Subsection (i) is modified to reword the burden of proof requirement.

Subsection (j) is modified to add a provision providing that lay representatives may assist an applicant in a hearing, but are not authorized to serve as the applicant’s attorney.

Subsection (k) is modified by eliminating the word “own.”

Subsection (l) is modified by the elimination of a comma.

Amend Section 12062. Issuance of GCA Hearing Decisions

Subsection (a) is modified and combined with subsection (b) to join the previously identified 30 and 45 day periods.

Subsection (c) and (d) are relettered to subsection (b) and (c) respectively.

Amend Section 12064. Requests for Reconsideration

Subsection (a) is modified to move the provision requiring a request for reconsideration be made within 30 calendar days to a new paragraph (2) of subsection (a).

- Paragraphs (1) and (2) would require that a request for reconsideration must be: (1) copied to the Bureau when made to the Commission, and (2) received by the Commission and Bureau

within the proscribed timeframe. The requirement to submit the request for reconsideration was modified to remove the Bureau and instead require that the request be copied to the complainant.

- Subsection (b) is modified to move the provision requiring that the request be copied to the Bureau to new paragraph (1) of subsection (a).
- Subsection (f) is added to specify that when the Commission grants reconsideration, the underlying decision is vacated and the Commission may take additional action on the application including affirming the decision, issuing a reconsidered decision, or other action as the Commission deems appropriate.

Amend Section 12066. Final Decisions; Judicial Review

Subsection (b)(2) is modified to make clear that a reconsidered decision is effective when specified in the decision as opposed to immediately when the reconsidered decision is issued.

Subsection (b)(3) is added to provide an additional option for the Commission to stay the effective date of a decision following the denial of a request for reconsideration.

Amend Section 12068. Decisions Requiring Resignation or Divestiture

Subsection (b)(4) is added which makes clear the requirements found under (a)(4) and (c)(2) also apply to limited liability companies.

Subsection (e) is added to provide a default date upon which a specified person must be removed after the effective date of the Commission's decision. This section requires the specified person to be removed no later than 60 days after effective date of the decision.

Regulation Text

A copy of the recently approved regulations is attached. That document is also available on the Commission's Web site under "Regulations/Recently Approved Regulations" at www.cgcc.ca.gov.

Questions, Concerns, Suggestions

For any questions, concerns, or suggestions regarding the adoption of this regulation, please contact Josh Rosenstein, Regulatory and Legislative Specialist, at (916) 274-5823.